

1 Tammy Hussin, Esq. (Bar No. 155290)
2 Lemberg Law, LLC
6404 Merlin Drive
3 Carlsbad, CA 92011
4 Telephone (855) 301-2100 ext. 5514
thussin@leberglaw.com
5

6 Lemberg Law, LLC
1100 Summer Street
7 Stamford, CT 06905
8 Telephone: (203) 653-2250
Facsimile: (203) 653-3424
9

10 Attorneys for Plaintiff,
Nanette Bailey
11
12

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15

16 Nanette Bailey,
17 Plaintiff,
18 vs.
19 GE Capital Retail Bank; and DOES 1-10,
inclusive,
20 Defendants.
21
22

Case No.: 3:14-cv-00338

COMPLAINT FOR DAMAGES
1. VIOLATIONS OF THE
TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C. § 227,
ET. SEQ.
2. VIOLATIONS OF BUSINESS &
PROFESSIONS CODE § 17200, *ET.*
SEQ.

JURY TRIAL DEMANDED

1 For this Complaint, the Plaintiff, Nanette Bailey, by undersigned counsel, states
2 as follows:
3

4 **JURISDICTION**

5 1. This action arises out of Defendants' repeated violations of the
6 Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* (the "TCPA"), and
7 violation of California's Business & Professions Code § 17200, *et. seq.*
8

9 2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.

10 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that
11 Defendants transact business here, Plaintiff resides in this judicial district, and a
12 substantial portion of the acts giving rise to this action occurred here.
13

14 **PARTIES**

15
16 4. The Plaintiff, Nanette Bailey (hereafter "Plaintiff"), is an adult individual
17 residing in Oakland, California, and is a "person" as defined by 47 U.S.C. § 153(10).
18

19 5. Defendant GE Capital Retail Bank ("GE"), is an Ohio business entity
20 with an address of 950 Forrer Boulevard, Kettering, Ohio 45420, and is a "person" as
21 defined by 47 U.S.C. § 153(10).
22

23 6. Does 1-10 (the "Agents") are individual employees and/or agents
24 employed by GE and whose identities are currently unknown to the Plaintiff. One or
25 more of the Agents may be joined as parties once their identities are disclosed through
26 discovery.
27
28

4 8. Beginning in or around October 2013, GE called Plaintiff's cellular
5 telephone by using an automated telephone dialer system ("ATDS") and/or by using
6 an artificial or prerecorded voice.

8 9. When Plaintiff answered the calls, GE used a prerecorded message
9 delivering information about account balance and transaction details for a person by
10 the name of Kim French (the “Debtor”)

12 10. Plaintiff does not know the Debtor and is no way responsible for the
13 Debt.

11. Plaintiff has no business relations with GE and never requested by an agreement or otherwise that she be contacted.

17 12. Plaintiff never provided her cellular telephone number to GE and never
18 provided her consent to GE to be contacted on her cellular telephone.

13. When the calls began, Plaintiff advised GE that she was being called in error and directed GE to remove her number from the account and to cease all communications with her.

14. Thereafter, despite having been informed of the foregoing, GE continued to call Plaintiff at a repeated and harassing rate, sometimes several times a day for successive days in a row.

15. Plaintiff does not stand alone in her allegations against GE and there are many other consumers nationwide who complain of receiving similar unwanted automated calls from GE, and are equally harmed by repeated intrusions into their invasions of privacy.

16. Plaintiff's allegations stated herein are demonstrative of the volumes of consumer complaints nationwide regarding GE's unwanted automated calls after repeated requests to stop. GE engages in a systematic and repeated business practice of knowingly and/or willfully ignoring the prohibitions of the TCPA and continuing to place automated calls to persons after being requested not to call

COUNT I
VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –
47 U.S.C. § 227, *ET SEQ.*

17. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

18. Plaintiff never provided her cellular telephone number to GE and never provided her consent to be contacted on her cellular telephone.

19. Without Plaintiff's consent and over her objection, GE contacted the Plaintiff by using an automatic telephone dialing system and by using a prerecorded or artificial voice on her cellular telephone in violation of 47 U.S.C. § 227(b)(1)(A)(iii).

20. GE continued to place automated calls to Plaintiff's cellular telephone after being advised it had the wrong number and knowing there was no consent to

1 continue the calls. As such, each call placed to Plaintiff was made in knowing and/or
2 willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. §
3
4 227(b)(3)(C).

5 21. The telephone number called by GE was assigned to a cellular telephone
6 service for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. §
7
8 227(b)(1).

9 22. The calls from GE to Plaintiff were not placed for “emergency purposes”
10 as defined by 47 U.S.C. § 227(b)(1)(A)(i).
11

12 23. GE’s telephone system has the capacity to store numbers in a random and
13 sequential manner and uses the system to place the calls.
14

15 **COUNT II**
16 **VIOLATION OF BUSINESS AND PROFESSIONS CODE**
17 **SECTION 17200 ET. SEQ.**

18 24. The Plaintiffs incorporate by reference all of the above paragraphs of this
19 Complaint as though fully stated herein.

20 25. GE engaged in repeated instances of unlawful activity and unfair
21 business practices as prohibited by Business and Professions Code sections 17200, *et*
22 *seq.* (“hereinafter “UCL”).
23

24 26. A business practice is “unlawful” if it violates an underlying state or
25 federal statute or common law. GE is in violation of the UCL by violating the TCPA.
26
27
28

1 27. GE engaged in unfair business practices in violation of the UCL by
2 repeatedly placing automated calls to Plaintiff multiple times a day, for weeks and
3 months on end, causing Plaintiff to be deprived of her right to be free from unwanted
4 invasions of privacy and causing injury to Plaintiff.
5

6 28. GE systematically violates the UCL by engaging in unfair business
7 practices in placing automated calls to Plaintiff and to other consumers nationwide
8 without their consent. GE ignores the prohibitions of the TCPA and consistently
9 disregards the privacy rights of Plaintiff and other consumers, intruding on their rights
10 to be free from unwanted intrusions, thereby injuring Plaintiff and other consumers
11 alike.
12

13 29. In order to stop this widespread practice, GE should be enjoined from
14 violating the TCPA and from continuing to call consumers after they either followed
15 the automated prompt system or otherwise requested that the calls stop.
16
17
18

19 **PRAYER FOR RELIEF**

20 WHEREFORE, the Plaintiff prays that judgment be entered against the
21 Defendants:
22

- 23 A. As a result of each call made in negligent violation of the TCPA,
24 Plaintiffs are entitled to an award of \$500.00 in statutory damages for
25 each call in violation of the TCPA pursuant to 47 U.S.C. §
26 227(b)(3)(B);
27
28

1 B. As a result of each call made in knowing and/or willful violation of the
2 TCPA, Plaintiffs are entitled to an award of treble damages in an
3 amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47
4 U.S.C. § 227(b)(3)(C));

5
6 C. Plaintiffs seek an Order from the Court pursuant to Business and
7 Professions Code § 17203 and 1704, enjoining GE from violating the
8 TCPA, so that consumers nationwide can be free from GE's unwanted
9 and unlawful invasions;
10

11
12 D. Costs of litigation and reasonable attorney's fees pursuant to pursuant to
13 Cal. Civ. Code § 1021.5 for violations of the UCL;

14
15 E. Such other and further relief as may be just and proper.

16 **TRIAL BY JURY DEMANDED ON ALL COUNTS**
17
18

19 DATED: January 23, 2014

TAMMY HUSSIN

20
21 By: /s/ Tammy Hussin
22 Tammy Hussin, Esq.
23 Lemberg Law, LLC
24 Attorney for Plaintiff Nanette Bailey
25
26
27
28